

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED
10/31/2019 10:09 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends rules governing the seeding and growing of Brassicaceae and implements SB 885 (2019)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/13/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Amy Bingham
503-986-4583
abingham@oda.state.or.us

635 Capitol St. NE
Salem, OR 97301

Filed By:
Amy Bingham
Rules Coordinator

NEED FOR THE RULE(S):

Oregon Department of Agriculture needed to establish the process for issuing permits for the spring planting of canola in the Willamette Valley Protected District.

Housekeeping update to the scientific name of blackleg species.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 885 (2019)

FISCAL AND ECONOMIC IMPACT:

No negative fiscal or economic impact is anticipated. The amendment adds the process for issuing of permits for spring planting canola if any additional acres may be allocated after fall planting permits have been issued.

Some businesses, if given a permit to grow canola, will see a positive economic impact as they will have an additional revenue stream.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Department of Agriculture anticipates an unknown cost of compliance for staff time in meeting with the protected

district advisory committee and reviewing applications submitted by persons seeking a permit for spring planting of canola. The cost is unknown at this time as the number of applicants or amount of time for review are unknown. No other state agency or local government or members of the public are likely to be economically affected by the rule.

A) The total number of small businesses subject to the rule is unknown; the type of small business are expected to be farmers. In the past year, Oregon Department of Agriculture received 15 applications for permits to grow canola for fall planting (however, more farmers may decide to grow canola and increase the number of applications received). In the Rules Advisory Committee meeting, it was estimated that we would have less than 4 applications for spring canola permits.

B) Except for the cost in printing an application and mailing it to ODA or emailing and the time taken to fill out an application; there are no reporting, record keeping, or administrative activities or cost required to comply with the rules.

C) There should be no cost of professional services, equipment supplies, labor or increased administration to comply with the rules. The rule adds information about how an applicant may apply for a permit.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small business owners were consulted and served as members of our rules advisory committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

603-052-0862, 603-052-0882

AMEND: 603-052-0862

RULE SUMMARY: Amended the definition for "blackleg" to add correct scientific terms.

CHANGES TO RULE:

603-052-0862

Definitions ¶¶

Unless the context requires otherwise, the following terms are defined as indicated:¶¶

(1) "Blackleg" means the disease of crucifer crops and Brassicaceae species caused by the fungi *Leptosphaeria maculans* (asexual stage – *Phoma lingam*) and *Leptosphaeria biglobosa* Tode ex Fr.) Ces. & de Not or *Plenodomus biglobosus* (Shoemaker & H. Brun).¶¶

(2) "Brassicaceae" means any genera and species in the plant family Brassicaceae including, but not limited to, all species of *Brassica* and *Sinapis*, and *Raphanus sativus* and excluding the ornamental genera *Arabis*, *Erysimum*, and *Iberis*.¶¶

(3) "Brassica Specialty Seed crop" means crops of the species *Brassica rapa*, *B. napus*, and *B. juncea* that may cross pollinate with canola and are grown for seed production.¶¶

(4) "Cover crop Brassica" means any member of the Brassicaceae that is grown as a cover crop and is not allowed to flower.¶¶

(5) "Crop Year" means the calendar year following the year the permit is issued.¶¶

- (6) "Department" means the State Department of Agriculture.¶
- (7) "Director" means the Director of the Department or the Director's duly authorized representative.¶
- (8) "Field" means a commercial production area in which the Brassicaceae are planted directly into the ground. A field may include one or more contiguous plots of land managed as a single unit. These plots may be separated by an unimproved farm road, ditch or hedgerow.¶
- (9) "Forage Brassica" means member of the Brassicaceae that is grown for animal/livestock feed and is not allowed to flower.¶
- (10) "Isolation Distance" means distance between crops to avoid cross pollination between canola and high erucic acid Brassica Specialty Seed crops.¶
- (11) "Isolation Distance Exception" means the planting of a crop at a distance less than the Isolation Distance established by the Department. ¶
- (12) "Isolation Distance Exception Agreement" means an agreement between any Brassica Specialty Seed crop grower and a canola grower to plant in a field that is less than the Isolation Distance. Agreements must be in writing, legally binding on the parties, accepting the risk of not maintaining Isolation Distances and signed by the parties to the agreement.¶
- (13) "Land manager" means any person who is legally responsible for the maintenance, use, and development of resources for a section of land or piece of property.¶
- (14) "Lottery" means a process whose success is governed by chance.¶
- (15) "Person" means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.¶
- (16) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.¶
- (17) "Protected District Advisory Committee" means a body of industry professionals, businesses and individuals who may advise and counsel the Department on the type of rapeseed species and varieties which may be produced in the protected district.¶
- (18) "Rapeseed" means plants of the species *B. napus*, *B. rapa* and *B. juncea* grown for the purpose of edible oil production or for inedible oil production.¶
- (a) "Edible oil production" means rapeseed that has a low erucic acid content and is grown for human or animal consumption. Canola grown for edible oil or livestock feed is a rapeseed that has a low erucic acid content.¶
- (b) "Inedible oil production" means rapeseed that has a high erucic acid content and is grown for industrial uses or biofuels. Canola grown for inedible oil production suitable for industrial uses is a rapeseed that has a high erucic acid content.

Statutory/Other Authority: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415, 570.450, ORS 570.405

Statutes/Other Implemented: ORS 570.405 - 570.415, 570.450, SB 885

AMEND: 603-052-0882

RULE SUMMARY: Amending the Willamette Valley Protected District rule (603-052-0882) to establish a process for issuing permits for spring planting of canola, if any additional acres are available after fall planting permits have been issued. Senate Bill 885 places a limit of 500 acres for planting in the Willamette Valley Protected District.

CHANGES TO RULE:

603-052-0882

Willamette Valley Protected District ¶¶

(1) Willamette Valley Protected District ¶¶

(a) "Willamette Valley Protected District" means the area encompassed within a rectangle formed by the point in Tillamook County that is the northwest corner of township 1 north, range 6 west, the point in Multnomah County that is the most northeastern point of township 1 north, range 2 east within Oregon, the point in Lane County that is the southeast corner of township 19 south, range 2 east and the point in Lane County that is the southwest corner of township 19 south, range 6 west. A map of the area encompassed by the Willamette Valley Protected District is available at: <https://oda.direct.ca/Canola>. ¶¶

(b) The Department may use the Protected District Advisory Committee to advise and counsel the Department on the production of rapeseed species in the protected district. ¶¶

(c) Within the Willamette Valley Protected District, canola for edible or inedible oil production may be grown only pursuant to a permit issued by the Department. ¶¶

(d) After the effective date of SB 885 (80th Oregon Legislative Assembly-2019 Regular Session), the production of canola for edible and inedible oil production within the Willamette Valley Protected District is limited to no more than 500 acres per crop year. ¶¶

(e) Within the Willamette Valley Protected District any canola must maintain an isolation distance of at least three (3) miles from any Brassica Specialty Seed crop, unless an Isolation Distance Exception agreement is on file with the Department. ¶¶

(2) Application for Permit to Grow Canola ¶¶

(a) ~~For the 2020 crop year, applications for a permit to grow canola must be received by July 19, 2019. Thereafter, for the fall planting and by February 15, 2020 for the spring planting. Thereafter, for all years other than 2020, applications must be received by June 30th for the upcoming crop year of each calendar year for the fall planting and by February 15 of each calendar year for the spring planting. For each spring planting season, applications will be accepted and permits issued until available acres are allocated.~~ ¶¶

(b) Applications must be complete and timely received in the Department by the dates in subsection (a). ¶¶

(c) Applications must be completed on a form provided by the Department and must include the following: ¶¶

(A) The name, address, and contact information of the applicant; ¶¶

(B) The nearest address and global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of each proposed field(s) to be cultivated in canola; ¶¶

(C) The number of acres of each field in which canola is proposed to be cultivated; ¶¶

(D) A map/aerial photo of the field showing clear boundaries and the center of the field marked with an X; ¶¶

(E) Information indicating whether the applicant is willing to adjust the number of acres requested to accommodate required isolation distance(s) and if so, the minimum number of acres that applicant may accommodate; and ¶¶

(F) May include a signed Isolation Distance Exception Agreement(s) if the applicant has entered into such agreement for the applicable crop year. ¶¶

(3) Review and Approval of Canola Permit Applications: The Department shall review complete applications to determine whether a permit to grow canola may be issued and, if so, the terms of each permit. ¶¶

(a) Using the information provided in each application, the Department will consult with the Willamette Valley Protected District Advisory Committee to determine the location and acreages of areas that are cultivated with or will be cultivated with Brassica Specialty Seed crops during the crop year for which the application to grow canola

is made.¶¶

(b) The Department will determine the allowed location for growing canola as requested in each application by considering the appropriate isolation distance from Brassica Specialty Seed crops existing at the time of the application or planned for cultivation during the crop year for which a permit to grow canola is sought.¶¶

(c) The Department will contact those applicants who may need an Isolation Distance Exception for the 2020 crop year by July 30th to obtain an agreement and provide a copy to the Department by August 9th. ~~For following the spring planting of the 2020 crop years, the Department will contact those applicants who may need an Isolation Distance Exception by July 15th to allow applicants the opportunity to obtain an Isolation Distance Exception Agreement if none is filed with an application and provide a immediately following the meeting of the advisory committee. For each year following the 2020 crop of the agreement to the Department by July 30th. year, the Department will contact those applicants who may need an Isolation Distance Exceptions will only be considered if the Department first receives a copy of an Iso as soon as possible after the advisory committee meeting for the fall or spring plantion Distance Exception Agreement.~~ng of that crop year. ¶¶

(d) Criteria for issuing permits:¶¶

(A) The Department will issue permits based on the ability to place canola fields maintaining industry recommended Isolation Distances from other Specialty Seed crops grown within the Willamette Valley Protected District. ¶¶

(B) The Department will consider maximum and minimum field sizes requested in order to permit up to the full 500 acres of canola in the Willamette Valley Protected District.¶¶

(C) The Department will attempt to promote the maximum opportunities for the production of canola by the most growers within the Willamette Valley Protected District.¶¶

(D) In the event there are additional acres to allocate after the minimum number of acres have been allocated to each permit applicant, the Department will conduct a lottery using all applications received to distribute the remaining available acreage to applicants up to the maximum acreage requested on the application.¶¶

(E) Any permit issued by the Department shall contain the allowed location and acreage for canola cultivation during the crop year for which the application is made. ¶¶

(F) Permits shall be issued in writing to the applicant by August 14, 2019 for the 2020 crop year. In following years permits shall be issued in writing to the applicant by August 10th for that crop year. Permits authorize the cultivation of canola only for the time period specified in the permit and only according to the terms of the permit.¶¶

(4) Denial of Applications for Canola Permit¶¶

(a) The Department may deny an application for the following reasons:¶¶

(A) The application was not timely received in the Department;¶¶

(B) The application contains false, misleading, or incorrect information;¶¶

(C) The location or acreage of fields sought for canola cultivation as provided in the application may not be accommodated or because acreage limits have been met; or¶¶

(D) The applicant has a history of noncompliance within the last three years with rules of the Department implementing ORS 570.400 or ORS 570.450.¶¶

(b) Any denial of an application shall be in a writing directed to the applicant and served by mail. Denials shall contain the information required by ORS 183.415.¶¶

(c) Applicants may request a hearing as provided in ORS Chapter 183 within 10 days after a notice of denial is received by the applicant.¶¶

(A) A request for hearing must be in writing and must be received in the Department within ten (10) days after a notice of denial is received by the applicant. ¶¶

(B) A request for hearing may not be in an email to the Department, but must be mailed, faxed or otherwise delivered to the Department.¶¶

(5) Violations: The Department may assess a civil penalty, not to exceed \$25,000, against a person that plants canola without a permit or violates the terms of a permit issued by the Department.

Statutory/Other Authority: ORS 561.190, 570.305, 570.405, 570.412, 570.415, 570.450

Statutes/Other Implemented: SB 885, 2013 HB 2427, ORS 570.305, 570.405, 570.410, 570.412, 570.415, 570.450